IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY (Newark)

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DANIEL BOCK, JR.	:	**2:11-cv-07593-KM**
	:	
Plaintiff	:	
	:	
vs.	:	
	:	**DEFENDANT'S BRIEF IN**
PRESSLER & PRESSLER, LLP,	:	**RESPONSE TO PLAINTIFF'S**
	:	**NOTICE OF SUPPLEMETAL**
Defendant	:	**AUTHORITY RE: STANDING**
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Pursuant to the Court's authorization Defendant responds as follows to Plaintiff's Notice of Supplemental Authority re: Standing:

Plaintiff cites numerous cases in which courts have refused to dismiss FDCPA suits in the wake of *Spokeo, Inc. v. Robbins*, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016). Respectfully, those cases are clearly distinguishable from the present one. In assessing those distinctions, three points are clear:

1. Mr. Bock never alleged actual damages or any concrete injury;
2. he stipulated that if he prevails he will not recover any actual damages, and that his recovery would be limited solely to statutory damages; and
3. he does not assert a claim based on a failure to provide any notice or procedure expressly provided for in the FDCPA.

Of the cases Plaintiff cites, the following all involved express assertions of actual damages in the plaintiffs' pleadings:

Case Cited by Plaintiff	**Actual Damages Assertion**
Blaha v. First Nat'l Collection Bureau, Inc., 2016 U.S. Dist. LEXIS 157575 (D.N.J. Nov. 10, 2016).	D. N.J. Case No. 2:16-cv-02791-WHW-CLW, Docket Entry 16, ¶¶ 59 and 65 and P. 14, ¶ (c) of the prayer for relief.
Kaymark v. Udren Law Offices, P.C., 2016 U.S. Dist. LEXIS 171061 (W.D. Pa. Dec. 12, 2016).	W.D. Pa. Case No. 2:13-cv-00419-CB-CRE, Docket Entry 23, ¶ 43, P/ 14, ¶ (3) of the prayer for relief.[1]
Carney v. Goldman, No. 15-260-BRM-DEA, 2016 U.S. Dist. LEXIS 177087 (D.N.J. Dec. 22, 2016).	D. N.J. Case No. 3:15-cv-00260-BRM-DEA, Docket Entry 27, ¶¶ 25(c), 30, and 108 and P. 17, ¶ (e) of the prayer for relief.[2]
Medina v. AllianceOne Receivables Mgmt., Inc., 2017 U.S. Dist. LEXIS 7325 (E.D. Pa. Jan. 19, 2017).	E.D. Pa. Case No. 2:16-cv-04664-HB, Docket Entry 2.[3]
Sullivan v. Allied Interstate, LLC, 2016 U.S. Dist. LEXIS 145451 (W.D. Pa. Oct. 18, 2016).	W.D. Pa. Case 2:16-cv-00203-MRH-CRE, Docket Entry 2, P. 6, ¶ (c) of the prayer for relief.
Long v. Fenton & McGarvey Law Firm P.S.C., 2016 U.S. Dist. LEXIS 170421 (S.D. Ind. Dec. 9, 2016).	S.D. In. Case No. 1:15-cv-01924-LJM-DKL, Docket Entry 1, P. 6, ¶ (4) of the prayer for relief.
George v. Wright, 2016 U.S. Dist. LEXIS 164096 (S.D. Ind. Nov. 29, 2016).	S.D. In. Case No. 1:15-cv-00811-JMS-DML, Docket Entry 1, P. 1, ¶ 1, P. 4, ¶ 8, P. 5, ¶ 2 of the prayer for relief.
Hill v. Accounts Receivable Servs., LLC, 2016 U.S. Dist. LEXIS 150791 (D. Minn. Oct. 31, 2016).	D. Mn. Case No. 0:16-cv-00219-DWF-BRT, Docket Entry 13, ¶ 43; P. 8, ¶ (a) of the prayer for relief.
Horowitz v. GC Servs. Ltd. P'ship, 2016 U.S. Dist. LEXIS 172359 (S.D. Cal. Dec. 12, 2016).	S.D. Cal. Case No. 3:14-cv-02512-MMA-RBB, Docket Entry 6, ¶¶ 28, 32, 40, and 44, and P. 8, ¶ 1 of the prayer for relief.
Munoz v. Cal. Bus. Bureau, Inc., 2016 U.S. Dist. LEXIS 151495 (E.D. Cal. Nov. 1, 2016).	E.D. Cal. Case No. 1:15-cv-01345-BAM, Docket Entry 1, ¶¶ 1. 36, and 39.
Biber v. Pioneer Credit Recovery, Inc., 2017 U.S. Dist. LEXIS 4890, *8 (E.D. Va. Jan. 11, 2017).	E.D. Va. Case No. 1:16-cv-00804-TSE-IDD, Docket Entry 39, P. 11, prayer for relief.

[1] In *Kaymark*, the plaintiff alleged actual damages (in the form of unauthorized overcharges), deprivation of property, and an unlawful lien.

[2] The first amended complaint specifically alleged a claim for actual damages and restitution.

[3] The plaintiff alleged that the letter at issue contained a materially false statement, and the amended complaint alleged "damages" without specifying whether they were actual or statutory.

Unlike Bock, the plaintiffs in each of these cases that he has cited asserted a claim for actual damages or alleged some sort of concrete injury, such as an overcharge.

In addition, the remaining trial court cases are distinguishable because the plaintiffs alleged conduct that, on its face, was capable of being a concrete injury, such as harm to credit scores or express misrepresentation of allegedly material facts.

Case Cited by Plaintiff	**Actual Damages Assertion**
Bautz v. ARS Nat'l Servs., Inc., 2016 U.S. Dist. LEXIS 178208 (E.D.N.Y. Dec. 23, 2016).	The plaintiff alleged materially false statements concerning the issuance of an IRS 1099-C in connection with any settlement.
Bowse v. Portfolio Recovery Assocs., LLC, 2016 U.S. Dist. LEXIS 151740 (N.D. Ill. Nov. 2, 2016).	Plaintiff alleged a failure to report his debt as disputed (as specifically mandated by the 15 U.S.C. § 1692e(8)) when communicating to credit reporting agencies.
Everett v. Fin. Recovery Servs., 2016 U.S. Dist. LEXIS 163233 (S.D. Ind. Nov. 28, 2016).	The plaintiff alleged materially false statements concerning the issuance of an IRS 1099-C in connection with any settlement. The plaintiff alleged "that the misleading nature of the Letter caused her to incur costs and expenses consulting with her attorneys in connection with the Letter, to suffer financial loss, and to be subject to 'the threat of concrete harm.'"
Paz v. Portfolio Recovery Assocs., LLC, 2016 U.S. Dist. LEXIS 160779 (N.D. Ill. Nov. 21, 2016).	Plaintiff alleged a failure to report his debt as disputed (as specifically mandated by the 15 U.S.C. § 1692e(8)) when communicating to credit reporting agencies.
Evans v. Portfolio Recovery Assocs., LLC, 2016 U.S. Dist. LEXIS 160570 (N.D. Ill. Nov. 20, 2016).	Plaintiff alleged a failure to report his debt as disputed (as specifically mandated by the 15 U.S.C. § 1692e(8)) when communicating to credit reporting agencies.

Unlike these cases, Bock alleges no violation of a right expressly granted by the FDCPA (*e.g.*, failing to provide information mandated for inclusion by 15 U.S.C. § 1692g(a)), and no express misrepresentation of material fact. Instead, his claim is based upon an alleged lack of meaningful attorney involvement. However, meaningful attorney involvement claims are based upon the false sense of urgency that can arise when a consumer is misled by an attorney's communication into believing that a case has reached a more serious stage. *See, e.g., Clomon v. Jackson*, 988 F.2d 1314 (2d Cir. 1993); *Avila v. Rubin*, 84 F.3d 222. 229 (7th Cir. 1996) ("An unsophisticated consumer, getting a letter from an "attorney," knows the price of poker has just gone up. And that clearly is the reason why the dunning campaign escalates from the collection agency, which might not strike fear in the heart of the consumer, to the attorney, who is better positioned to get the debtor's knees knocking.")

Bock was actually sued. He was served with a real summons and complaint, and subject to entry of a default judgment had he failed to appear. There is no doubt that the "price of poker" had gone up. He makes no assertion that Defendant sued the wrong debtor or for the wrong creditor, or that it sued on the wrong debt or in an improper venue. *His sole complaint is that Defendant did not do enough work for its own client in reviewing what is essentially a two-sentence complaint*. In making such a complaint he articulates no concrete or particularized injury.

Finally, Plaintiff points to the recent decision in *In re Horizon Healthcare Servs. Data Breach Litig.*, 2017 U.S. App. LEXIS 1019 (3d Cir. Jan. 20, 2017). However, *Horizon* involved a jurisdictional attack at the pleadings stage. The Plaintiffs claim to have sustained "economic damages and other actual harm for which they are entitled to compensation." *Id.* at *4. At the pleadings stage the Court had a basis to find jurisdiction.

In contrast, in the wake of *Spokeo* the Fourth Circuit last week affirmed the dismissal of a suit predicated upon a data security breach. In *Beck v. McDonald*, 2017 U.S. App. LEXIS 2095 (4th Cir. Feb. 6, 2017) the Court found that the alleged harm from the increased risk of future identity theft and the cost of measures to protect against it (without a showing that any of their personal information had been misused) was not sufficient to demonstrate a concrete or particularized injury. *Beck* noted the difference between a jurisdiction challenge at the pleadings stage and one that comes later. Here, Bock asserted no actual damages or particularized injury in his complaint, his summary judgment motion, or his stipulation as to recovery. He has failed to establish Article III standing, and this case should be dismissed for lack of subject matter jurisdiction.

Dated: February 13, 2017. Respectfully submitted,

/s/ Michael J. Peters
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